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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/669,779      | 09/24/2003  | Jeffrey M. Gross     | 4002-3423/PC890.00  | 6416             |

7590 05/21/2007  
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| EXAMINER |
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BLANCO, JAVIER G

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3738

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| MAIL DATE | DELIVERY MODE |
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05/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/669,779

**Applicant(s)**

GROSS, JEFFREY M.

**Examiner**

Javier G. Blanco

**Art Unit**

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-18, 20-24 and 28-34 is/are pending in the application.
- 4a) Of the above claim(s) 9-14 and 31-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2006 and 24 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/12/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicants' amendment of claims 3, 4, 7, 8, 15, 18, 20, and 21 in the reply filed on March 8, 2007 is acknowledged.
2. Applicants' cancellation of claims 1, 2, 19, 25-27, and 35-42 in the reply filed on March 8, 2007 is acknowledged.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims.
  - a. Therefore, "the second tapered portion tapering away from the second exterior surface toward the first exterior surface such that the second pin has a larger portion that is near the second exterior surface and a smaller portion that is near the first exterior surface" (see claim 5) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

According to the Applicants (see REMARKS filed March 8, 2007), said subject matter is shown in Figure 2. The Examiner respectfully disagrees. Figure 2 clearly shows pins 16, 18 having first ends 32, 34 (i.e., their "larger portions") on the same side surface (e.g., exterior surface 24) of the construct. In other words, both of pins 16, 18 have first ends 32, 34 tapering away from the same exterior surface (e.g., exterior surface 24), and towards the same exterior surface (e.g., exterior surface 26).

Art Unit: 3738

b. Therefore, “the pin is embedded within the body, such that it is surrounded on all sides by the body” (see claim 8 and claim 30) must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

According to the Applicants (see REMARKS filed March 8, 2007), said subject matter is shown in Figure 2 and Figure 3. Each of Figures 1-3 clearly shows chamfered entrances/exits 29, with each of pins 16, 18 having first ends 32, 34 exposed to said chamfered entrances/exits 29 (i.e., the pin is not completely surrounded by the construct). The Examiner will broadly interpret the term “embedded”.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 3-18, 20-24, and 28-34 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-49 of copending Application No. **10/669,764**. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claim a fusion implant comprising two bone pieces held together by a pin/member. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. This was addressed during the previous Office Action.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Regarding claim 7, the limitation “the pin extends through the body from one exterior surface to another” is indefinite as to the scope of the invention. According to (now independent) claim 3, the pin “stops short of the second surface”. The Examiner will broadly interpret “stops short of the second surface” and “the pin extends through the body from one exterior surface to another” as similar limitations.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 3, 7, 8, 15-18, and 30 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Boyd (US 6,761,738 B1).

Referring to Figures 1-12 and 17-24, Boyd discloses a fusion implant comprising: (i) a body having first (e.g., sheet/plank 12) and second (e.g., sheet/plank 14) pieces of bone assembled together to form a construct having exterior surfaces (see Figure 2); and (ii) at least one pin (e.g., cross-members 16) projecting into the first and second body pieces to hold them together, the pin having a first end (end 36) and a second end (end 37), a portion of the pin tapering (see Figure 20) between the first and second ends. The implant further comprises an opening through the body communicating with adjacent bony structures (see Figures 3, 4, 6, 8-12, 17 and 19; see columns 7, 10, and 12-14). The pins are made from bone, metal, or polymer. The pins ends are flush with the outer surfaces of the fusion implant (see Figures 3-5 and 8), extend through the body from one exterior surface to another (see Figures 22 and 24), or are embedded within the body (see Figure 10).

### ***Response to Arguments***

10. With regards to the 102(e) rejection based on Boyd (US 6,761,738 B1), Applicants' arguments filed March 8, 2007 have been fully considered but they are not persuasive.

a. With regards to independent claim 3, the Applicants argue: "nothing therein shows or suggests a pin that stops short of the second surface". The Examiner respectfully disagrees. As indicated in the 112 rejection above, the Examiner is broadly interpreting "stops short of the second surface" and "the pin extends through the body from one exterior surface to another" as similar limitations. Further, the "construct having exterior surfaces" could be broadly interpreted as: (i) exterior surfaces of plates 12 and 14, or (ii) exterior surfaces of the assembly 160 (as shown in

Art Unit: 3738

Figure 10). Figure 10 clearly shows the pin(s) as stopping “short of the second surface”. Figures 20 and 21 clearly show embodiments with pin(s) stopping “short of the second surface”.

b. With regards to independent claims 8 and 30, the Applicants argue that Body does not disclose the pin as “embedded within the body”. The Examiner respectfully disagrees. As disclosed in column 10 at lines 6-18 (see Figure 10), the sheets/planks are encased by osteogenic material 178 (as part of the “body having first and second pieces of bone”). Contrary to Applicants’ argument, osteogenic material 178 is part of the fusion implant (as clearly shown in Figure 10).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 3, 4, 7, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepard (US PG Pub No 2004/0078078 A1) in view of Yaccarino, III et al. (US 7,044,968 B1). Referring to Figures 18, 19, and 26-29 (particularly Figure 19), Shepard discloses a fusion implant comprising:

(i) A body having first (Figures 18, 19, and 26-29: bone component 30) and second (Figures 18 and 19: bone component 12; Figures 26-29: bone components 112, 130) pieces of bone assembled together to form a construct having exterior surfaces; and



Art Unit: 3738

(ii) At least one pin (Figures 18 and 19: pins 95, 97; Figures 26-29: pins to be inserted into bores 140, 142, or bore 150) projecting into the first and second body pieces to hold them together, the pin having a first end and a second end. The pins are made from bone, metal, or polymer (see entire document). The ends of the pins are flush with the outer surfaces of the fusion implant (see Figures 23, 27, and 29), or one end is exposed at a first surface and the other end stops short of a second surface (see Figure 19). The pins are longitudinally disposed (see Figures 23 and 29), or obliquely disposed (see Figures 19 and 27).

Shepard does not particularly disclose the pins as “tapering between the first and second ends”. However, this is already known in the art. For example, Yaccarino, III et al. disclose (see Figures 8B and 9-13) a fusion implant comprising a body having first (bone component 122) and second (bone component 124) pieces of bone assembled together to form a construct having exterior surfaces; and at least one pin (pins 146 or wedge nail 360) projecting into the first and second body pieces to hold them together, the at least one pin having a first end and a second end, wherein a portion of the at least one pin tapers between the first and second ends in order to securely hold both bone components together while preventing pullout (see column 6, line 49 to column 8, line 16).

a. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have combined the teaching of a fusion implant comprising at least one pin having a portion tapering between the first and second ends, as taught by Yaccarino, III et al., with the fusion implant of Shepard, in order to securely hold both bone components together while preventing pullout.

Art Unit: 3738

b. It should be noted that the connectors disclosed by Yaccarino, III et al. are cylindrical (e.g., pins 146), or wedge-shaped (i.e., tapering) as shown by wedge nail 360. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have used a tapering connector with the fusion implant of Shepard since, in view of Yaccarino, III et al., cylindrical connectors (e.g. rods, dowels, pins) and tapering connectors (i.e., wedges) are functionally equivalent and interchangeable.

13. Claim 3-8, 18, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimp et al. (US 6,855,167 B2).

Referring to Figures 1, 2, 4, 6, 7, 21-32, 26(c)-26(f), 35, and 99, Shimp et al. disclose a fusion implant comprising: (i) a body having first (e.g., sheets/planks 30, 214, 267, 466) and second (e.g., sheets/planks 32, 216, 269, 468) pieces of bone assembled together to form a construct having exterior surfaces (e.g., top surface 12, bottom surface 14, side surfaces 17, 19, and end surfaces 16, 18); and (ii) at least one pin (e.g., pins 90) projecting into the first and second body pieces to hold them together, the pin having a first end (e.g., end 91) and a second end (e.g., end 93), a portion of the pin tapering (see column 11, lines 66-67; column 13, lines 25-29 and lines 58-64) between the first and second ends. The pins are made from bone, metal, or polymer (see column 24, lines 24-35). The pins ends are flush with the outer surfaces of the fusion implant (see column 12, lines 21-39), or extend through the body from one exterior surface to another (see Figure 99). The pins ends might be chamfered (see column 11, lines 60-63; column 22, lines 16-24). The pins are obliquely disposed (see Figures 6, 7, 26(d), and 26(e))

Art Unit: 3738

in order to restrain/prevent separation or slippage of the sheets/planks (see column 19, line 53 to column 20, line 27; column 24, lines 48-65).

Shimp et al. disclose the invention as claimed. Although Shimp et al. disclose the pins ends as flush with the outer surfaces of the fusion implant (see column 12, lines 21-39), or as extending through the body from one exterior surface to another (see Figure 99), Shimp et al. did not disclose expressly said pin as exposed at a first surface of the implant and stopping short of another surface of the implant. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have modified Shimp et al. pin(s) to be exposed at a first surface of the implant and stopping short of another surface of the implant because Applicants have not disclosed that exposing a pin's first end at a first surface of the implant and stopping the second end of said pin short of another surface of the implant provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicants' invention to perform equally well with a pin having both ends flush/exposed, extending through, embedded, or having one end exposed at a surface of the implant. Furthermore, the instant application discloses (see PG Pub at paragraph 0030) said variations in pin insertion as optional (i.e., no criticality).

### ***Response to Arguments***

14. With regards to the 103(a) rejection based on Shimp et al. (US 6,855,167 B2), Applicants' arguments filed March 8, 2007 have been fully considered but they are not persuasive.

Art Unit: 3738

a. In response to Applicants' argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgement on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

b. In response to Applicants' argument that the "*pin stop short of an outer surface does away with any possibility of interfering with adjacent tissues, presenting a low profile*", which advantage was not presented in the Specification as originally filed, it should be noted that the claim language recites one end exposed to the outer surface (just like Shimp et al. '167). So the point of "*does away with any possibility of interfering with adjacent tissues, presenting a low profile*" is moot since both the instant Application and Shimp et al. '167 will have pins with ends exposed to the outer surface.

c. As indicated in the 112 2<sup>nd</sup> paragraph rejection (above), the Examiner will broadly interpret "stops short of the second surface" and "the pin extends through the body from one exterior surface to another" as similar limitations.

15. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimp et al. (US 6,855,167 B2) in view of Boyd (US 6,761,738 B1).

Shimp et al. disclose the invention as claimed. Although Shimp et al. disclose the desirability of fusing/stabilizing adjacent vertebrae, they did not particularly disclose the body of

Art Unit: 3738

the implant as comprising an opening communicating with the adjacent bone structures.

However, this is well known in the art. For example, Boyd discloses a fusion implant comprising an opening through the body communicating with adjacent bony structures, which opening contains bone growth promoting substance in order to promote/accelerate bone ingrowth and attachment of said implant to said adjacent bone structures (see Figures 3, 4, 6, 8-12, 17 and 19; see columns 7, 10, and 12-14). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have combined the teaching of a fusion implant comprising an opening communicating with the adjacent bone structures, which opening contains bone growth promoting substance, as taught by Boyd, with the fusion implant of Shimp et al., in order to promote/accelerate bone ingrowth and attachment of said implant to said adjacent bone structures.

16. Claims 20 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimp et al. (US 6,855,167 B2) in view of Ferree (US 6,494,883 B1).

Referring to Figures 1, 2, 4, 6, 7, 21-32, 26(c)-26(f), 35, and 99, Shimp et al. disclose a fusion implant comprising: (i) a body having first (e.g., sheets/planks 30, 214, 267, 466) and second (e.g., sheets/planks 32, 216, 269, 468) pieces of bone assembled together to form a construct having exterior surfaces (e.g., top surface 12, bottom surface 14, side surfaces 17, 19, and end surfaces 16, 18); and (ii) at least one pin (e.g., pins 90) projecting into the first and second body pieces to hold them together, the pin having a first end (e.g., end 91) and a second end (e.g., end 93), a portion of the pin tapering (see column 11, lines 66-67; column 13, lines 25-29 and lines 58-64) between the first and second ends. The pins are made from bone, metal, or

Art Unit: 3738

polymer (see column 24, lines 24-35). The pins ends are flush with the outer surfaces of the fusion implant (see column 12, lines 21-39), or extend through the body from one exterior surface to another (see Figure 99). The pins ends might be chamfered (see column 11, lines 60-63; column 22, lines 16-24). The pins are obliquely disposed (see Figures 6, 7, 26(d), and 26(e)) in order to restrain/prevent separation or slippage of the sheets/planks (see column 19, line 53 to column 20, line 27; column 24, lines 48-65).

Shimp et al. disclose the invention as claimed. Shimp et al. does not disclose the pins as angling through the construct obliquely such that it is neither parallel nor perpendicular to any of the exterior surfaces. However, this is already known in the art. For example, Ferree teaches a fusion implant comprising connecting struts angled through the construct obliquely such that it is neither parallel nor perpendicular to any of the exterior surfaces (see Figures 13A and 14A) in order to help hold bone graft into position (see column 6, lines 35-54). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have combined the teaching of a fusion implant comprising connecting struts angled through the construct obliquely such that it is neither parallel nor perpendicular to any of the exterior surfaces, as taught by Ferree, with the fusion implant of Shimp et al., in order to help hold bone graft into position.

### ***Response to Arguments***

17. With regards to the 103(a) rejection based over Shimp et al. (US 6,855,167 B2) in view of Ferree (US 6,494,883 B1), Applicants' arguments filed March 8, 2007 have been fully considered but they are not persuasive.

Art Unit: 3738

a. In response to Applicants' argument that "Ferre's struts are designed and positioned for a wholly different purpose than those in both the Shimp et al. reference and the present application", the fact that Applicants use pins/struts for a different purpose does not alter the conclusion that its use in a prior art device would be *prima facie* obvious from the purpose disclosed in the reference." *In re Lintner*, 173 USPQ 560. The reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. See, e.g., *In re Kahn*, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). The three references (i.e., Shimp et al. '167, Ferree '883, and the instant application) use rods/pins/dowels/struts to connect/attach bone segments/components/pieces. Not only will the rods/pins/dowels/struts will connect/attach bone segments/components/pieces together, but they are also capable of holding material (e.g., bone graft material). From a structural point of view, the orientation of Ferree's struts will provide a stronger attachment of the segments/components/pieces.

18. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimp et al. (US 6,855,167 B2) in view of Foley et al. (US PG Pub No 2002/0107572 A1).

Shimp et al. disclose the invention as claimed. Shimp et al. does not disclose the use of a fixation device with their fusion implant. However, this is well known in the art. For example, Foley et al. teach a fusion implant (Figures 1 and 2: implant 10) comprising a fixation device (plate 15) in order to substantially prevent movement of bony structures adjacent the fusion implant (see entire document). Therefore, it would have been obvious to a person having

Art Unit: 3738

ordinary skill in the art at the time the invention was made to have combined the teaching of a fusion implant comprising a fixation device, as taught by Foley et al., with the fusion implant of Shimp et al., in order to substantially prevent movement of bony structures adjacent the fusion implant.

19. Claims 29 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimp et al. (US 6,855,167 B2), as modified by Ferree (US 6,494,883 B1), and further in view of Foley et al. (US PG Pub No 2002/0107572 A1).

Shimp et al., as modified by Ferree (US 6,494,883 B1), disclose the invention as claimed in claims 29 and 36 except for disclosing the use of a fixation device with their fusion implant. However, this is well known in the art. For example, Foley et al. teach a fusion implant (Figures 1 and 2: implant 10) comprising a fixation device (plate 15) in order to substantially prevent movement of bony structures adjacent the fusion implant (see entire document). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have combined the teaching of a fusion implant comprising a fixation device, as taught by Foley et al., with the fusion implant of Shimp et al. (as modified by Ferree), in order to substantially prevent movement of bony structures adjacent the fusion implant.

### ***Conclusion***

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).




A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 571-272-4747. The examiner can normally be reached on M-F (9:30 a.m.-7:00 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300 for regular communications and After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Javier G. Blanco

May 2<sup>nd</sup>, 2007



David H. Willse  
Primary Examiner